

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 355 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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RAJNIKANT GOVINDBHAI PATEL

Versus

USHABEN RAJNIKANT PATEL

Appearance:

MR KN PRAJAPATI for MR IM BENGALI for petitioners.

MR DK DESAI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision: 29/03/2000

C.A.V.JUDGMENT

#. This civil revision application under section 115 of the Civil Procedure Code is at the instance of the husband who is the petitioner in Hindu Marriage Petition No.149/96 in the court of 2nd Joint Civil Judge (Senior Division), Ahmedabad (Rural), Ahmedabad against the order of the Court dated 29.1.1999 below Exh.11. Under this order the learned trial court directed the petitioner -

husband to pay Rs.1000/- per month each as interim maintenance to the respondent-wife and minor son Jatinkumar.

#. Learned counsel for the petitioner contended that, looking to the income of the petitioner, the amount of interim maintenance awarded to the wife and son is towards higher side. Second contention is raised that the wife has been granted maintenance by the Criminal Court under section 125 of the Criminal Procedure Code at the rate of Rs.500/- per month each to the wife and son and as they are getting the maintenance, no second maintenance could have been granted. Lastly, it is contended that, the court may reduce the amount of maintenance.

#. Mr.D.K.Desai, learned counsel for the respondent contended that the amount awarded towards interim maintenance to the wife and son is towards lower side. The petitioner is doing good business and his income is very high. The respondent-wife is claiming maintenance for herself Rs.5000/- per month and for son Rs.2000/- per month. The wife has stated his income of Rs.10,000/- to Rs.12,000/-. In addition to his business income from cycle shop he is also earning Rs.5000/- per month as pay from the factory.

#. In respect of the income of the petitioner, the respondent has not produced any evidence. Equally there is no evidence that cycle shop was closed by the petitioner.

#. Having given my thoughtful considerations to the rival submissions made by the learned counsel for the parties, the matter deserves to be remanded back to the court below.

#. The husband - petitioner has not produced any evidence of the closing of his cycle shop as well as his pay which he is receiving from the factory. The wife has stated his income of Rs.10,000/- to Rs.12,000/from the shop and in addition to that, Rs.5000/- per month as pay. If, we go by the these figures, income of the husband-petitioner is of Rs.15,000/- to Rs.17,000/- per month. The wife-respondent has filed the affidavit in respect of the income of the husband-petitioner. The petitioner is a person who is in possession of the best evidence of his income and he felt contended by making mere denial and as such income as what the wife has stated has to be accepted. Learned trial court has not given out how it reached to the figure of Rs.1000/- a sum

to be awarded as maintenance each to the wife and son. In the facts of this case, the trial court should have recorded reasons not to accept that figure of income of the husband given out by the wife. The way and manner in which this matter is decided by the court below shows that, this woman and child have been considered to be chattel or as if the court grants charity to them. The court has to record definite findings on the income of the husband-petitioner and then to arrive at the reasonable sum to be awarded to the wife and son as maintenance. In these days of high prices of essential commodities, a reasonable sum has to be awarded to the wife and child towards interim maintenance. It is not only a formality to pass the order for grant of interim maintenance. The wife has to provision food, clothing, education of boy, medical expenses and residential accommodation etc. If, we go by these requirements which are dire necessities of the life, the amount of Rs.1000/- per month awarded each to wife and child seems to be towards lower side.

#. The wife has been granted interim maintenance at the rate of Rs.300/- per month by the Judicial Magistrate, Ahmedabad (Rural), Ahmedabad under section 125 of the Criminal Procedure Code under the order dated 21.4.1997. Rs.300/- per month has also been awarded for the son. Thereafter, on the application of the wife, under the order dated 18.9.1999 this amount has been enhanced to Rs.500/- per month. This order has been passed after the order impugned in this civil revision application. I have gone through this order of the learned Judicial Magistrate and therefrom find that neither of the counsel who is appearing for the parties brought to the notice of the court of this impugned order. The maintenance cannot be granted under all the provisions available for grant thereof to the wife and son. The maintenance may be granted only where the wife is not in a position to maintain herself. While granting the maintenance under section 24 of the Hindu Marriage Act or Section 125 of the Criminal Procedure Code or Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956, the order passed for maintenance under any of these enactments earlier, is to be taken into consideration by the court. In view of the facts of this case, fault if any is there, it lies with both the parties. But, this court cannot ignore these subsequent developments which have been taken place.

#. In the result, this civil revision application succeeds in part and the same is allowed to that extent that the order of the trial court is to be treated only a

provisional/ex-parte interim order under section 24 of the Hindu Marriage Act subject to the final decision. After hearing learned counsel for both the parties and considering the order passed by the learned Judicial Magistrate, it is open to the court below to give fresh thought to the matter in the light of the observations made in this judgment. It is also expected of the trial court to keep in mind the basic principles which are to be taken note of while deciding the application filed by the wife and the children for grant of the maintenance. This figure may not be taken to be a final figure and the trial court has to reach to its own figure of the sum to be awarded as interim maintenance to the wife and children taking into consideration the income of the husband-petitioner. Learned trial court is directed to pass a fresh order in this matter within a period of one month from the date of the receipt of the writ of this order or certified copy thereof whichever is earlier. Rule is made absolute in the terms aforesaid with no order as to costs.

(pathan)